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Attorneys for Plaintiff Trevor Moss

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TREVOR MOSS,

Plaintiff,

v.

TIBERON MINERALS LTD.,

Defendant.

Case No.: C 07-2732- SC

**NOTICE OF PLAINTIFF'S MOTION TO  
ALTER JUDGMENT PURSUANT TO  
FRCP 59(e) AND MOTION FOR RELIEF  
FROM JUDGMENT DISMISSING FOR  
*FORUM NON- CONVENIENS*  
PURSUANT TO FRCP 60(b)**

Hearing Date: January 25, 2008  
Time: 10:00 a.m.  
Location: Courtroom 1, 17<sup>th</sup> Floor  
Judge: Hon. Samuel Conti

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1 TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:

2 YOU ARE HEREBY NOTIFIED THAT on Friday, January 25, 2008 at 10:00 a.m. or as  
 3 soon thereafter as it may be heard in Courtroom 1 of the above-entitled court located at 450  
 4 Golden Gate Avenue, 17<sup>th</sup> Floor, San Francisco, California, 94102, the Honorable Samuel Conti  
 5 presiding, plaintiff Trevor A. Moss, by and through his undersigned counsel, will move this Court  
 6 for an order pursuant to Federal Rule of Civil Procedure 59(e) altering the judgment of dismissal  
 7 entered by this Court on December 5, 2007, as well as for an order pursuant to Federal Rule of  
 8 Civil Procedure 60(b) for relief from the December 5, 2007 judgment.

9 Pursuant to Federal Rule of Civil Procedure 59(e), plaintiff brings this motion for good  
 10 cause on the grounds that there exist manifest errors of law and fact. The Court did not hold  
 11 defendant to the proper burden of proof, improperly relying on the alleged number of witnesses  
 12 and the alleged location of documents in foreign jurisdictions, rather than considering the  
 13 materiality of the witnesses and documents and the availability of the witnesses and documents.  
 14 Further, this Court applied a choice of forum standard based upon a choice of law provision,  
 15 although neither plaintiff Moss nor the other party to the consulting agreement, Nui Phao Mining  
 16 Joint Venture Company Ltd. (“Nuiphaovica”), had chosen Ontario as a forum. Finally, the Court  
 17 erred in finding Ontario an appropriate choice of alternative forum, despite the fact that Ontario  
 18 has no interest whatsoever in either the parties or their dispute.

19 Plaintiff also brings this motion for good cause pursuant to Federal Rules of Civil  
 20 Procedure 60(b)(1) and 60(b)(6) which provide that “[o]n motion and just terms, the court may  
 21 relieve a party or its legal representative from a final judgment, order, or proceeding for the  
 22 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ... (6) any other  
 23 reason that justifies relief.” As detailed in the accompanying declaration of James M. Hanavan,  
 24 plaintiff’s counsel became aware that a key document—the Pre-Acquisition Agreement executed  
 25 by defendant Tiberon— apparently negated the alleged relevance of defendant’s proposed  
 26 Ontario witnesses in its *forum non conveniens* analysis. The apparent existence of this document  
 27 came to counsel’s attention only days before the opposition was due, and its authenticity could  
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1 not be proven at that time. Although plaintiff propounded discovery directed to the only  
2 argument presented by Tiberon as to the relevancy of witnesses and documents located in  
3 Ontario, the Court granted defendant's motion before the discovery responses were due.

4 In addition, for the first time in its reply papers, defendant cited Canadian law purporting  
5 to establish a defense that would be supported by Canadian witnesses and documents. Further,  
6 for the first time in its reply papers, defendant presented a supporting witness declaration directed  
7 to the same defense. While the declaration established that the purported defense was not, in fact,  
8 available to defendant, plaintiff was unable to address the lack of relevance of Canadian witnesses  
9 established by this witness declaration as it was first presented with the reply papers.

10 These motions will be based upon this notice, all pleadings, papers and records in this  
11 action, the memorandum of points and authorities, the request for judicial notice, the declarations  
12 of Trevor A. Moss, William G. Horton, and James Hanavan, as well as the argument presented at  
13 the hearing.

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16 Dated: December 19, 2007

CRAIGIE, McCARTHY & CLOW

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19 /s/ James M. Hanavan

20 By: James M. Hanavan  
21 Attorneys for Plaintiff Trevor Moss  
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